YUMMY SDN. BHD.

v.

JOHOR STATE ECONOMIC DEVELOPMENT CORPORATION

HIGH COURT MALAYA, JOHOR BAHRU
DATO' HJ. ABDUL MALIK BIN HJ. ISHAK J
[ORIGINATING SUMMONS NO. 24-64-1995]
4 APRIL 1995

LANDLORD & TENANT: *Renewal of tenancy agreement - Option exercised - Rental paid - Imposition of new terms by defendant landlord - Whether the old terms and conditions applied.*

CONTRACT: *Rental received - Whether landlord has waived right to determine fresh terms and conditions - Doctrine of estoppel.*

PRACTICE & PROCEDURE: *Issues purely on the construction of option clause and documents - Whether there is a need for a trial.*

The plaintiff rented the defendant's premises at Kompleks Tun Abdul Razak, Johor Bahru for three consecutive terms. For the first term, the tenancy agreement was for a floor space measuring 2,002 square feet at the ground floor for two years beginning from 1 November 1987 at a monthly rate of RM7,807.80 with one month's deposit of RM7, 807.80. By clause 1 of the tenancy agreement there was an option of renewal accorded to the plaintiff which agreement was renewed for another two years beginning from 1 November 1989 on the same terms and conditions as the tenancy agreement for the first term. Upon expiration of the second term, the defendant agreed to renew the tenancy agreement for the third term for three years beginning from 1 November 1991 and ending on 31 October 1994 at an increased rental of RM11,011 with one month's rental deposit of RM11,011. The tenancy for the third term incorporated not only the floor space of 2,002 square feet but also the pavement area measuring 450 square feet in front of the premises for which the plaintiff was required to pay RM270 per month with one month's rental deposit of equivalent amount.

By letter dated 17 June 1994 and in compliance with the option clause, the plaintiff exercised their option. Subsequently, on the strength of invoices issued by the defendant, the plaintiff paid rentals for the months of November and December 1994 and the defendant issued receipts for the payments. The plaintiff thought that the defendant had agreed to renew the tenancy agreement for the fourth term on the same terms and conditions as the third term but by letter dated 21 December 1994 which was only received by the plaintiffs on 28 December 1994, the defendant offered the extension of the tenancy agreement for a further period of three years for the floor space of 2,002 square feet only at RM24,024 per month with three months deposit of RM72,072 and a month's security deposit of RM24,024. The plaintiff objected to the late delivery of the letter as it affected the time as allowed under the notice period and also adverted to previous negotiations between the parties where they had purportedly agreed to retain the terms of the third term for the fourth term which was denied by the defendant. In relation to the bills for the months of November and December 1994 the defendant admitted that they were so issued pending the decision of the management.

The main issues were on the quantum of the rental payable for the fourth term and the right of the defendant as landlord to impose additional terms.

Held:

[1] The invoices for the months of November and December, 1994 were renewals of rents for the fourth term as they were issued after the plaintiffs had exercised their option to renew the tenancy for the fourth term on the same terms and conditions as the tenancy for the third term. To construe otherwise would run counter to common sense and justice.

[2] The payment and receipt of the money was meant as rent and nothing else. If the defendant thought that the receipt of those monies were meant to be an interim measure they had waived that right. Pure and simple, the plaintiff paid the rentals after receiving those invoices and having paid those rentals and being issued with the receipts, the defendant must have waived whatever rights they had under the tenancy agreement for the third term.

[3] The defendant was aware that the tenancy for the third term was due to expire on receipt of the option letter from the plaintiff and yet they accepted the rentals for the months of November and December 1994 under a false assumption that they could still insist on their rights to determine fresh terms and conditions of rental for the fourth term. Under these circumstances, the principle of waiver applied and the monies so paid were paid as rents and received as rents by the defendant for the fourth term.

[4] As the plaintiff pays the rent they must accept the defendant as the landlord and the acceptance of the rent by the defendant means that the defendant cannot dispute the plaintiff's right to possession of 2,002 square feet plus the pavement area of the ground floor of Kompleks Tun Abdul Razak for the fourth term. It is in this context that the estoppel doctrine comes into play.

[5] The issue involved in this case is purely on the construction of the option clause and the supportive documentary evidence was sufficient, without the need for a trial, to decide the matter at hand.

[Plaintiff's application granted with costs]

Cases referred to:

Croft v. Lumley 5 E and B. 648, 680 ***(foll)***
Hartell v. Blackler [1920] 2KB 161 ***(foll)***
Dumpor's case [1601] 4 Rep. 1196, 1Sm LC 12th. Edn., p. 43 ***(cit)***
In Davenport v. The Queen 3 App. Cas. 131 ***(cit)***
Strong v. Stringer [1889] 61 L.T 470 ***(foll)***
American Cyanamid v. Ethicon Ltd [1975] AC 396; [1975] 1 ALL ER 504; 2 WLR 316 ***(not foll)***
Eng Mee Yong & Ors v. V. Letchumanan [1979] 2 MLJ 212 ***(not foll)***
National Land Finance Co-Operative Society Ltd. v. Sharidal Sdn. Bhd. [1983] 2 MLJ 211 FC ***(foll)***

For the plaintiff - Syed Ahmad Helmy Dahlan, (Mohd. Yaacob bin Bakanali with him); M/s. S.A. Helmy & Partners
For the defendant - Reginald Vallipuram; M/s. Reginald Vallipuram & Co.

JUDGMENT

Hj. Abdul Malik bin Hj. Ishak J:

The plaintiff carried out food business in a big way. They rented premises belonging to the defendant at Kompleks Tun Abdul Razak, Jalan Wong Ah Fook, Johor Bahru for three consecutive terms and had an almost perfect landlord tenant relationship with the defendant.

For the first term, the tenancy agreement was for the rental of floor space measuring 2,002 square feet at the ground floor for two years beginning from 1 November 1987 and ending on 31 October 1989 at a monthly rental rate of RM7,807.80 sen with one month's rental deposit

of RM7,807.80 sen. As the plaintiff was engaged in what is popularly known as "Yummy Fried Chicken", they incurred expenses in not only renovating the premises but also to purchase equipment and finally to advertise that business. By cl. 1 of the tenancy agreement there was an option of renewal accorded to the plaintiffs.

For the second term, the tenancy agreement was renewed for another two years beginning from 1 November 1989 till 31 October 1991 on the same terms and conditions as the tenancy agreement for the first term.

Upon expiration of the second term, the defendant agreed to renew the tenancy agreement for the third term for three years beginning from 1 November 1991 and ending on 31 October 1994 at an increased rental rate per month of RM11,011 with one month's rental deposit of RM11,011. The tenancy for the third term incorporated not only the floor space of 2,002 square feet but also the pavement area measuring 450 square feet located in front of the premises and for this extra space the plaintiff was required to pay RM270 per month with one month's rental deposit of equivalent amount.

Briefly put, the tenancy agreement for the third term saw an increase in rent and an additional floor space of business manoeuverability for which the plaintiff had to pay.

What is crucial in the tenancy agreement for the third term is the final part of cl. 1 which reads as follows:

> ... With An Option For Renewal for a further period of three (3) years upon expiry of the present term (provided the tenant shall before the expiry give to the landlord three (3) months notice in writing of their intention to exercise the said option), such renewal shall be subject to the rent thereof being first reviewed and decided by the landlord and such other terms and conditions as the landlord shall in his discretion find it necessary to impose.

By letter dated 17 June 1994 and in compliance with the abovementioned option clause, the plaintiffs exercised their option in the following terms:

> Tetuan Harta Consult Sdn. Bhd.,
> No. 3A, Tingkat 6,
> Komtar Jalan Wong Ah Fook,
> 80000 Johor Bahru.
>
> 17 June 1994.
>
> Tuan,
>
> **Penyambungan Penyewaan Ruang Di Tingkat Bawah Komtar**
>
> Adalah dengan hormatnya dimaklumkan bahawa penyewaan bagi ruang yang tersebut di atas akan tamat pada 30 Oktober 1994.
>
> Merujuk kepada surat perjanjian penyewaan, kami dengan ini ingin melaksanakan opsyen penyambungan bagi ruang tersebut.
>
> Kami berharap agar tuan dapat memberikan surat tawaran penyambungan penyewaan untuk tindakan kami selanjutnya.
>
> Sekian, terima kasih.
>
> Yang benar,
>
> t.t.
> Saiful Sidek Abdullah
> Pengurus Operasi/Pembangunan
> Yummy Sdn. Bhd.

Now, even though the letter of option was not addressed directly to the defendant there was affidavit evidence that Tetuan Harta Consult Sdn. Bhd. managed Kompleks Tun Abdul Razak on behalf of the defendant and even the defendant did not at any time dispute that the plaintiffs had exercised their option within time.

Through Harta Consult Sdn. Bhd., the defendant issued invoices for the months of November and December 1994 showing the rentals of 2,002 square feet together with the pavement and these invoices were issued direct to the plaintiffs at the rented premises (see Exhibits "MI5" and "MI6" in encl. 2). It is appropriate, at this juncture, to reproduce the invoice for 1 November 1994 only and it is as follows:

Harta Consult Sdn. Bhd.

(Agen Penyewaan Perbadanan Kemajuan Ekonomi Negeri Johor),
Ibu Pejabat: Bilik 3, Tingkat 4 Komtar,
Jalan Wong Ah Fook,
80000 Johor Bahru
Johor.

Kepada: Yummy Sdn. Bhd.
Alamat: Tingkat Bawah,
Kompleks Tun Abd Razak,
80000 Johor Bahru.

Bil No: IV10010438
No. Pelanggan: Yummy - KM
Tarikh: 1 November 1994

Bil	Kenyataan	RM Sen
	Projek : KMTR Perkara: Tuntutan Sewa Bulan November No: Agreement: AYUMMY-KM Tarikh Akhir Bayaran: 8 November 1994	
1	Tuntutan untuk lot: 000FFC	11,011 .00
2.	Tuntutan untuk lot: 000000	270 .00
	Nota: Tandatangan Tidak Diperlukan Bagi Bil Oleh Komputer	
	Jumlah	11,281 .00

Ringgit: Sebelas Ribu Dua Ratus Lapan Puloh Satu Sahaja.

Pengurus

For convenience, the invoice for 1 December 1994 bears the same minute details as listed above except with regard to the number of the invoice which is IV10010655 and the last date of payment is listed as 8 December 1994.

On the strength of these invoices, the plaintiffs paid rentals for the months of November and December 1994 and the defendant issued receipts for such payments (see Exhibit "MI7" in encl. 2).

At this juncture, the scenario was this. The plaintiff thought that the defendant had agreed to renew the tenancy agreement for the fourth term on the same terms and conditions like the third term. If this was the thinking of the plaintiff based on the invoices for November and December 1994 together with the receipts thereof, the plaintiff was in for a rude shock. By letter dated 21 December 1994 (Exhibit "MI8" in encl. 2) but which letter was only received by the plaintiff on 28 December 1994 (by affidavit evidence the defendant seems to agree that the plaintiff received that letter on 28 December 1994, though initially there was some discord), the defendant offered the extension of the tenancy agreement for a further period of three years for the floor space of 2,002 square feet only at RM24,024 per month with three months deposit of RM72,072 and a month's security deposit of RM24,024. On receipt of this shocking letter, the plaintiff responded and by letter dated 29 December 1994 explained that they only received the defendant's letter (Exhibit "MI8" in encl. 2) on 28 December 1994 at about 4.00 p.m. and objected to its late delivery as it affected the time as allowed under the notice period. In that letter (Exhibit "MI9" of encl. 2) the plaintiff adverted to the negotiations between the two parties immediately preceding the expiration of the third term where both parties were said to have mutually agreed to apply the terms and conditions of the third term to the fourth term. The pertinent parts of that letter were worded in this fashion:

> Kami amat terperanjat terhadap kandungan surat tuan tersebut yang mensyaratkan pembaharuan penyewaan premis di atas diberikan atas syarat kadar sewa dinaikkan pada kadar RM24,024 sebulan dengan deposit tambahan untuk empat (4) bulan. Selanjutnya juga kami dapati tuan menaikkan sewa tersebut untuk kawasan penyewaan utama berkeluasan 2,002 kaki persegi tidak termasuk kawasan pejalan kaki berkeluasan 450 kaki persegi. Kami akan menyatakan ini adalah bertentangan dengan persetujuan yang telah dicapai di perbincangan yang telah diadakan sebelum perjanjian penyewaan tersebut yang tamat pada 31 Oktober 1994.
>
> Berdasarkan persetujuan yang telah dicapai yakni kadar sewa untuk kedua-dua kawasan utama dan kawasan pejalan kaki yang masing-masing berkeluasan 2,002 kaki persegi dan 450 kaki persegi akan di tetapkan pada kadar RM11,281. Tambahan pihak tuan telah pun mengeluarkan inbois-inbois yang telah pun kami bayar untuk bulan-bulan November dan Disember 1994 pada kadar tersebut untuk tempoh tiga (3) tahun akan datang.

The defendant by letter dated 11 January 1995 (this letter was exhibited by the plaintiffs as "MI10" in encl. 2 and by the defendant as "EMI" in encl. 4) denied that there was any discussion between the parties in regard to the terms and conditions of the tenancy for the fourth term as alleged by the plaintiffs, and in relation to the bills for the months of November and December 1994 the defendant admitted that they were so issued pending the decision of the management. Perhaps, in the context of this case, it is pertinent to ask who is the management? The answer is not far to seek. Encik Esa bin Mamek ("Esa") who affirmed an affidavit on behalf of the defendant on 1 March 1995 in encl. 4 categorically stated that he alone had the power to decide after being advised by the manager of Harta Consult Sdn. Bhd. This is what he said:

> 7.01. Akan tetapi semua keputusan yang melibatkan hak-hak defendan termasuk, *inter alia*, pemberian penyewaan-penyewaan baru, pembaharuan penyewaan-penyewaan yang ada, kadar sewa untuk penyewaan yang baru dan yang diperbaharukan, tempoh penyewaan dan tempoh opsyen adalah dibuat oleh saya di dalam sifat capacity saya sebagai Ketua Eksekutif Divisyen Pengurusan Hartanah defendan.
>
> 7.02. Akan tetapi adalah menjadi amalan untuk Pengurus Harta Consult Sdn. Bhd. untuk mengemukakan pandangannya supaya menolong saya untuk melaksanakan tugas ini.

It is obvious that Esa is a powerful personality in so far as the renewal of the tenancy for tenants in Kompleks Tun Abdul Razak is concerned. In a show of power, Esa had the audacity of inviting the plaintiff to determine the market value of the rental at the plaintiff's own costs from anyone of the valuers as listed by Esa.

Encik Reginald Vallipuram for the defendant submitted at great length and from the tenor of his submission it is clear that the defendant is not objecting to the plaintiff continuing the tenancy agreement for another three years and neither is there an objection and, in fact, the defendant is not disputing that the plaintiff has duly exercised their option to renew the tenancy agreement. The defendant merely objects and disputes as to the quantum of rental that the plaintiff has to pay for the fourth term and, consequently, the right of the defendant as the landlord to impose such other terms as the defendant deems fit, for example, the imposition of an additional deposit of three months would flow from it, so submitted Encik Reginald Vallipuram.

Under the option clause, once the plaintiff has exercised their option and, in this case, such an option was validly exercised by letter dated 17 June 1994, then the next event would happen. This event would be in the form of an assertion by the defendant that they have reviewed and decided on the rent and to impose other terms and conditions as they deem necessary. The crucial question to ask is this: Has the defendant reviewed and decided on the rent for the fourth term? Tuan Syed Ahmad Helmy Dahlan for the plaintiff argued painstakingly and brought me to a maze of disorganised facts and authorities and finally he submitted that the two invoices for the months of November and December 1994 (Exhibits "MI5" and "MI6") together with the receipts thereof (Exhibit "MI7") were solid evidence for the Court to arrive at an irresistible conclusion that the defendant had complied with that part of the option clause where it is stated that "... such renewal shall be subject to the rent thereof being first reviewed and decided by the Landlord and such other terms and conditions as the Landlord shall in his discretion find it necessary to impose."

Though the invoices were computer generated, Esa had the authority to control and monitor its output and distribution and it cannot now be said as was sought to be explained that these were interim invoices that could not bind the defendant. Surely Esa was fully aware (after all he had all along the advice of the manager of Harta Consult Sdn. Bhd.) that the plaintiff's tenancy was due to expire and its fourth term was around the corner as can be seen by the option letter which Esa must have, in the ordinary course of business, received it. Even if those computer generated invoices were printed in error, why did the defendant issue two hand written receipts which were dated "4 November 1994" and 29 December 1994" respectively acknowledging receipts of the monthly rentals for the fourth term for the months of November and December 1994? Here, one must bear in mind the letter from the defendant dated 21 December 1994 (Exhibit "MI8" in encl. 2) which was received by the plaintiff on 28 December 1994 (the date of receipt not disputed by the defendant) wherein the rental was increased together with four months deposit for 2,002 square feet of business space only. This letter was prepared before the receipt for the month of December 1994 rental was issued. It can safely be deduced that the defendant took things lightly when they increased the rental by letter dated 21 December 1994 and received by the plaintiff on 28 December 1994 without at the same time monitoring the issue of the receipt for 29 December 1994. The conduct of the defendant in issuing the letter dated 21 December 1994 was, in the circumstances, rightly described by Tuan Syed Ahmad Helmy Dahlan as a pure exhibition of *mala fide* bearing in mind that the same plaintiffs had filed an originating summons *vide* number 24-529-94 in the High Court, Johor Bahru against the same defendant and judgment was given in favour

of the plaintiffs. The defendant's Counsel sought to argue that the originating summons number 24-529-94 though filed on 5 July 1994 had no bearing and did not in any way influence the defendant, in particular Esa, in regard to the present case.

In my judgment, the invoices for the months of November and December 1994 were renewals of rents for the fourth term as they were issued after the plaintiffs had exercised their option to renew the tenancy for the fourth term on the same terms and conditions as the tenancy for the third term. To construe otherwise would run counter to common sense and justice.

What are the legal implications that may arise when the defendant accepted the rentals for the months of November and December 1994 which were actually meant for the fourth term from the plaintiff? Lord Campbell in *Croft v. Lumley* 5 E and B. 648, 680 seems to have the answer. There, the lessor's agent accepted rent accrued due after an alleged forfeiture but insisted that he received the money as compensation for occupation only and not as rent and that he reserved the lessor's right of re-entry. The case came first before the Court of Queen's Bench, who held that the acceptance of the rent was under the circumstances a waiver of the forfeiture. His Lordship, who delivered the judgment of the Court said:

> There is an established maxim of law that, where money is paid, it is to be applied according to the expressed will of the payer, not of the receiver. If the party to whom the money is offered does not agree to apply it according to the expressed will of the party offering it, he must refuse it, and stand upon the rights which the law gives him. We see no reason why this maxim should not be applied to the transaction in question.

Here, when the plaintiff issued the payment for rentals they were motivated and goaded by the two invoices issued by the defendant. Thus, when the plaintiff paid the rentals they were under expectation that the terms and conditions for the fourth term would be the same as the third term and the plaintiff was on stronger footing than the facts in *Croft v. Lumley* (*supra*).

The decision of *Croft v. Lumley* was adopted and applied by Bailhache J, in the case of *Hartell v. Blackler* [1920] 2 KB 161. Briefly, the facts in *Hartell v. Blackler* (*supra*) were that a tenant whose tenancy had been determined by notice to quit wrote to his lessor enclosing money as and for rent accrued due since the expiry of the notice. The lessor sent on the letter and enclosure to her solicitors who replied "(our client) does not recognize you as her tenant, and we will retain the money for the time on account of use and occupation of her premises but not as rent." After considering other authorities, Bailhache J, said:

> In this state of authorities I come to the conclusion that if a tenant tenders money as rent accrued due after the expiry of a notice to quit it is not safe for the lessor to receive it if he wants to rely on the notice, even though at the time of the receipt he expressly says that he receives the money not as rent but in some other character. Mr. Murphy attempted to draw a distinction between the case of a forfeiture and that of determination of a tenancy by notice to quit, but I am unable to see that there is any difference in principle between them. In both cases the question is: Has the landlord admitted that the tenant remains in occupation as tenant? I think that in this case the judgment of the County Court Judge was right and that the appeal must be dismissed.

It is pertinent to point out that *Croft v. Lumley* (*supra*) went straight to the House of Lords and what happened there was amply summarised in the notes to *Dumpor's* case [1601] 4 Rep. 119b, in 1 Sm. LC, 12th Edn., at p. 43 as follows:

> The question of waiver was submitted, with others, to the Judges, and eight out of nine were of opinion that, if there had been a forfeiture, it had been waived by the receipt of the money which had been offered as rent and as rent only. Of the two peers who decided the

a case Lord Cranworth gave no opinion on the question of waiver, but Lord Wensleydale said he thought it was a question of fact, and not of law, whether the transaction amounted to a payment and receipt of rent, and that he was led to suppose that it did not, as the money was not demanded back when the lessor declared that he would only take it as compensation. His Lordship appeared to be of opinion that the rule *solvitur in modum solventis* is only applicable to the case of a payment in respect of one of two debts.

b Likewise in this case with a slight variation, the payment and receipt of the money was meant as rent and nothing else. If the defendant thought that the receipt of those monies was meant to be an interim measure they had, in my judgment, waived that right. Pure and simple, the plaintiff paid the rentals after receiving those invoices and having paid those rentals and being issued with the receipts, the defendant must have waived whatever rights they had under the tenancy agreement for the third term.

c In *Davenport v. The Queen* 3 App. Cas. 131, a lessee of crown lands committed a breach of covenant which rendered the lease voidable. The Government with notice of the breach accepted rent which had accrued due after the breach, but accompanied their acceptance with a notification that they accepted it without prejudice to their right to insist on a forfeiture. The Privy Council, who found as a fact that the money was not only paid as rent but received as rent, held that under those circumstances the lessor's protest that the acceptance was d only conditional was unavailing. Here, the defendant was aware that the tenancy for the third term was due to expire on receipt of the option letter from the plaintiff and yet they accepted the rentals for the months of November and December 1994 under a false assumption that they could still insist on their rights to determine fresh terms and conditions of rentals for the fourth term. Under these circumstances, I have no choice but to hold and, I so hold, that the principle of waiver applied and the monies so paid were paid as rents and received e as rents by the defendant for the fourth term.

In my opinion, I am not wrong to say by simple logic that just as payment of rent by the tenant ordinarily estops him from disputing his landlord's title, so the acceptance of rent by the landlord ordinarily estops him from disputing his tenant's right to possession of the premises, as such, and the validity of the lease or demise. Here, as the plaintiff pays the rent f they must accept the defendant as the landlord and the acceptance of the rent by the defendant means that the defendant cannot dispute the plaintiff's right to possession of 2,002 square feet plus the pavement area of the ground floor of Kompleks Tun Abdul Razak for the fourth term. It is in this context that the estoppel doctrine comes into play (*Strong v. Stringer* [1889] 61 LT 470).

g An attempt was made to impress upon me that previously before the expiry of the tenancy for the first term (which was scheduled to end on 31 October 1989) the defendant sent a letter of offer for the continuation of the tenancy by letter dated 27 July 1989 (see Exhibit "Z12" in encl. 5) and, consequently, it was argued that the plaintiff too should for the purpose of renewal of their tenancy for the fourth term wait for this sort or letter or its equivalent instead of bulldozing their way into the fourth term of their tenancy. The answer to that is simple. The tenancy for the third term was scheduled to end on 31 October 1994 and by 17 h June 1994 the plaintiff had exercised his option. It was only in December, to be precise by letter dated 21 December 1994 but received by the plaintiff on 28 December 1994, that the defendant sent the letter of offer to extend the tenancy agreement for the fourth term to the plaintiffs - very late in the day unlike Exhibit "Z12" in encl. 5. This argument therefore fails.

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In an attempt to salvage the sinking ship, the defendant's Counsel argued that since there were conflicts of evidence on affidavits the matter should proceed for trial. No authority was advanced for this proposition.

I am reminded of what Lord Diplock said in *American Cyanamid v. Ethicon Ltd.* [1975] AC 396; [1975] 1 ALL ER 504; [1975] 2 WLR 316 to the effect that:

> It is no part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial ...

In almost the same vein Lord Diplock again said in *Eng Mee Yong & Ors. v. V. Letchumanan* [1979] 2 MLJ 212 especially at p. 216:

> Their Lordships must therefore turn to the evidence that was before the High Court on the hearing of the application bearing in mind that if there appears to be any conflict of evidence which is not on the face of it implausible, such a conflict ought not to be disposed of on affidavit evidence only. It leaves a serious question to be tried.

With respect, I beg to disagree with what Lord Diplock said in those cases and I would like to paraphrase it by saying that the general principles expounded in those cases should be read and governed by the particular facts of those cases and it could not be applied generally to all cases. The issue involved in this case is purely on the construction of the option clause and the supportive documentary evidence was sufficient, without the need for a trial, to decide the matter at hand. I am fortified in my view by the passages that appeared in the decision of Salleh Abas CJ (Malaya) (as he then was) in *National Land Finance Co-operative Society Ltd. v. Sharidal Sdn. Bhd.* [1983] 2 MLJ 211 FC where his Lordship said:

> Counsel for the appellants objected to the respondents taking the proceedings by an Originating Summons instead of by a writ. He argued that there are matters of credibility of witnesses and issue of facts which could only be decided by oral evidence instead of by sworn affidavits. With respect, we disagree with the submission. The issue involved in this case is purely a matter of construction of the sale and purchase agreement between the parties. No other evidence is needed to determine the issue than the massive correspondence that passed between them and their solicitors. We think that the learned Judge was right in holding that the issue can be decided on the basis of the documents exhibited in Court together with the undisputed facts disclosed and that there are no issues relevant to the case which require evidence to be called at a trial. We would further add that there is nothing to prevent the appellants from cross-examining Haji Ahmad Roose bin Haji Mohd. Ali if they were not happy with his affidavits. In this case the appellants surely had the opportunity to cross-examine him, but they did not avail themselves of it and let this opportunity pass by. We are therefore of the view that the procedural objection raised by the appellants had no substance.

Likewise here, the defendant could, if they wanted to, apply to cross-examine Mohd. Ibrahim bin Salleh on his affidavits. Nothing of that sort transpired.

For the reasons adumbrated above, I granted prayers (a) to (e) of encl. 3 which were as follows:

> a) Plaintif berhak untuk pembaharuan penyewaan di premis Tingkat Bawah, Kompleks Tun Abdul Razak, Jalan Wong Ah Fook, 80000 Johor Bahru, Johor untuk tiga (3) tahun dari tarikh 1hb November 1994 dengan sewa pada kadar RM11,281 sebulan dengan deposit sewa yang di tetapkan pada kadar satu (1) bulan sewa.

b) Plaintif adalah berhak untuk pembaharuan penyewaan di premis Tingkat Bawah, Kompleks Tun Abdul Razak, Jalan Wong Ah Fook, 80000 Johor Bahru, Johor untuk kawasan utama seluas 2,002 kaki persegi dan juga kepada kawasan pejalan kaki berkeluasan 450 kaki persegi untuk tempoh tiga (3) tahun dari 1 November 1994 hingga 31 Oktober 1997.

c) Defendan hendaklah dalam tempoh tujuh (7) hari dari tarikh perintah ini menyempurnakan Perjanjian Penyewaan yang baru bagi premis tersebut mengandungi syarat-syarat dan terma-terma penyewaan dengan sewa pada kadar RM11,281 sebulan meliputi kawasan utama berkeluasan 2,002 kaki persegi dan kawasan pejalan kaki (pavement area) berkeluasan 450 kaki persegi untuk tempoh (3) tiga tahun dari 1 November 1994 hingga 31 Oktober 1997.

d) Defendan, agen, kakitangan dan/atau pekerja defendan adalah di larang dari mengganggu dan/atau menghalang hak plaintif untuk menghuni dan menikmati premis Tingkat Bawah, Kompleks Tun Abdul Razak, Jalan Wong Ah Fook, 80000 Johor Bahru bagi keseluruhan tempoh penyewaan tiga (3) tahun dari tarikh 1 November 1994 hingga 31 Oktober 1997.

e) Kos prosiding ini hendaklah di bayar oleh defendan kepada plaintif.